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REVIEW OF THE OPERATION OF AND EXPERIENCE ARISING FROM THE APPLICATION AND IMPLEMENTATION OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Replies by States and regional groupings on steps taken to meet their commitment to the Set of Principles and Rules

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I. MOROCCO

The Government of Morocco stated that:

"At present there is no specific legislation on restrictive business practices. However, Act No. 008-71 of 12 October 1971 concerning regulation and surveillance of the prices of products and goods, and of conditions for their handling and sale, largely covers certain restrictive business practices such as the possession of goods for speculative purposes, their sale at a price higher than that set by the State, etc.

"Article 289 of the Penal Code stipulates penalties for any practice liable to give rise to a financial gain that does not result from the natural workings of supply and demand.

"It should be mentioned in this regard that a new law on competition which will consolidate the various provisions mentioned above is in the process of being adopted.

"As far as monopolies are concerned, it should be noted that the monopoly in the hands of the Office de Commercialisation et d'Exportation des Produits Agricoles has been abolished. Monopolies held by State enterprises for the import of such products as sugar, tea, grain and vegetable oils have also been abolished following the promulgation of Act No. 13/19 on foreign trade.

"The State monopoly on exports of phosphates and phosphate products, and on the import and marketing of tobacco, remains in force."

II. THAILAND

The Government of Thailand stated that:

"The Department of Internal Trade, Ministry of Commerce of Thailand, would like to inform that in so far as the Government is involved in overseeing monopoly or restrictive business practices, we mainly emphasize the use of administrative measures for coping with the conduct of entrepreneurs. This measure has been implemented in compliance with the Government's free enterprise policy, that is, it will intervene in private business at a minimum level. If such administrative measure is ineffective, the legal measure will be introduced by using power given by the Price Fixing and Anti-Monopoly Act, 1979. So far, the implementation of administrative measures has been considered as fairly satisfactory, thus there is no anti-monopoly charge filed against any entrepreneur. However, in order to develop the Price Fixing and Anti-Monopoly law to meet international standards and to cope with new conduct which may create monopoly or restrictive business practices under the present complicated and changing world of business, the law has been reformed to be more effective by division into two drafts, the price fixing act and anti-monopoly act, which are now under legislative process."

III. TURKEY

The Government of Turkey stated that:

"At present there is no Competition Law enacted in Turkey. The Competition Protection Law will be the first legislation in this field to enter into force. There was no such specific regulations before. However, there are various provisions existing in certain laws such as the Civil Code, the Turkish Code of Obligations, the Turkish Trade Law and some others. But these are not directly related to restrictive business practices.

"The Turkish Government has started preparing the draft of a bill on Protection of Competition and it is presently on the agenda of Turkish Parliament. It is expected to enter into force by the end of the year.

"In brief, our draft consists of the following provisions:

"The purpose of the Draft Act is, within the markets for goods and services, to establish a system ensuring the necessary regulation, supervision and the prevention of abuse of dominant position by undertakings and the agreements, decisions and concerted practices which have as their object or effect the prevention, restriction or distortion of competition.

"This Draft Act applies to operations as regards measures, decisions, regulation and supervision for the protection of competition concerning the agreements, decisions and concerted practices which have as their object or effect the prevention, distortion or restriction of competition amongst any undertakings which either operate in or may affect the markets for goods and services within the territory of Turkey and the abuse of dominant power in the market and all kinds of operations and conduct which are deemed to create a merger or acquisition by which competition in the market would significantly be impeded.

Prohibited practices

"Cartel Agreements: The agreements and concerted practices of the undertakings and association of undertakings and decisions of the associations of undertakings which cause or may have as their object or effect, directly or indirectly, the prevention, distortion or restriction of competition in a market for goods and services are unlawful and prohibited.

Exemptions

"However, this prohibition is not absolute. The Board may lift such provisions in cases where the agreements contribute to improving the production or distribution of goods and providing services or promoting technical or economic progress, allowing consumers a fair share of the resulting benefit.

Abuse of Dominant Position

"Being in a dominant position is not illegal per se. On the other hand, any abuse of a dominant position is prohibitied.

Mergers and acquisitions

"Mergers or acquisitions shall be valid immediately after related transactions take place, however the Competition Board shall publish notifications in order to specify invalid mergers and acquisitions.

Administrative penalty payment

"The Board may impose fines, on the undertakings and the associations of undertakings, or an amount up to 10 per cent of the previous year's gross income, in case of violation of the provisions.

"The Board may impose on the undertakings and the association of undertakings, periodic penalty payments, calculated from the date specified in the decision.

Competition authority

"A Competition Authority is instituted for the purposes of establishment and improvement of markets for goods and services within free and effective competition and the supervision of enforcement of this Act and also to exercise all other duties attributed to itself by the Act. Competition Authority shall be autonomous."